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In re Application of	:	
Alamouti et al.	:	
Application No. 09/594,467	:	DECISION REFUSING STATUS
Filed: June 14, 2000	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. 1999-0342	:	
Title: Methods and Apparatus for Use in	:	
Communicating Voice and High Speed Data in	:	
a Wireless Communication System	:	

This is in response to the petition filed November 30, 2000, under 37 CFR. §1.47(a).

The petition under 37 CFR. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on June 14, 2000, without an executed oath or declaration. Accordingly, on August 14, 2000, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring for the purposes of this decision an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of October 14, 2005.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make timely a two month extension of time was also provided. The petition fee in the amount of \$130.00 was not provided. Pursuant to petitioner's request deposit account 01-2745 will be charged the fee.

A grantable petition under 37 CFR. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been

presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirements (1).

As to item (1), where an inventor cannot be located/reached as in the case of inventor Ryan, rule 47 applicant must demonstrate diligent effort was made to find or reach the non-signing inventors. See MPEP 409.03(d). The statements made in the petition do not illustrate "diligent effort" was made to locate the non-signing inventor. Although rule 47 applicant indicates two mailing were made to non-signing inventor's last known address and contacted his former employer, these actions are not sufficient to establish diligent effort was made to locate inventor Ryan. Beyond inquiring of the assignee of an updated address, petitioner has not demonstrated that they attempted to locate inventor Ryan. Did rule 47 applicant attempt to call inventor Ryan? Rule 47 applicant may wish to conduct an electronic search or inquire the joint inventors whether they are aware of a forwarding address for non-signing inventor. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in a statement of facts. It is important that the statement contain facts as opposed to conclusions. If inventor Ryan is located, a copy of the application papers (specification, including claims, drawings, and oath or declaration) should be mailed to the inventor's mailing address.

Further, if the inventor is located and he refuses to execute the application papers, rule 47 applicant will need to provide the mailing address in a newly executed declaration or in an application data sheet pursuant to 37 CFR 1.76.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service:
(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

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Office of Petitions